# [50 CFR Part 17]

ENDANGERED AND THREATENED WILD-LIFE AND PLANTS

Proposed Determination of Critical Habitat for the Palila

The Director, United States Fish and Wildlife Service (hereinafter, the Director and the Service, respectively) hereby issues a Proposed Rulennking which would determine Critical Habitat for the Palila (Psittirostra bailleui), an Endangered Hawaiian bird. This Preposal is issued pursuant to section 7 of the Endangered Species Act of 1973 (18 U.S.C. 1531-1543; 87 Stat. 884; hereinafter the Act).

#### BACKGROUND

The Palila, a small bird of the Hawaiian Honeycreper Family, is now restricted to a relatively small area on the Island of Hawaii, and has been officially listed as Endangered since 1967. Hope for the survival and recovery of this species centers on maintenance of its forest habitat on the slopes of Mauna Kea.

A notice of intent to determine Critical Habitat for the Palila was published by the Service in the Federal Registra of May 16, 1975 (40 FR 21499-21500). Subsequently, the Director received several comments indicating that Critical Habitat for the Palila consisted of the Mamane-Naio Forests around Mauna Kea. On Juno 18, 1976, the Service's Region 1 in Portland submitted a precise delineation of a recommended Critical Habitat zone in this area. After evaluating this recommendation and supporting data, the Director determined to proceed with this Proposed Rulemaking.

The area delineated below consists primarily of Mamane (Sophora chrysophylla)-Naio (Myoporum sandwicense) forest, and extends from about

7,000 to 10,000 feet in elevation. The Palila depends on the Mannane and Neto trees for food, the Her, and her min sitten it cannot survice without there tree species. Moreover, the delineated area apparently contains the world's entire known population of Palila, and supports most of the large and intermediate-sized Mamane and Najo trees on Mauna Kea. This area is large enough to allow space for the population to expend, and includes a full range of altitudinal and geographical sites needed by the Palila for normal life cycle movement. Such movement is the response of the species to shifting seasonal and annual patterns of flowering, seed set, and ensuing pod development of the Mamane vegetation.

#### EFFECTS OF THE RULEMAKING

The effects of this determination are involved primarily with Section 7 of the Act, which states:

"The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized. funded, or carried out by them do not teopardize the continued existence or such endancered species and threatened species of result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical."

An interpretation of the term "Critical Habitat" was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17765). Some of the major points of that interpretation are: (1) Critical Habitat could be the entire habitat of a species, or any portion thereof, if any constituent element is necessary to the normal needs or survival of that species; (2) Actions by a Federal agency attecting Critical Habitat of a species would not conform with section 7 if such actions might be expected to result in a reduction in the numbers or distribution of that species of sufficient magnitude to place the species in further jeopardy, or restrict the potential and reasonable recovery of that species; and (3) There may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely affect that species.

This last point has not been well understood by some persons. There has been widespread and erroneous belief that a Critical Habitat designation is something akin to establishment of a widerness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a Critical Habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to Section 7 of the Act are applicable in a certain area.

A Critical Habitat designation must be mental agencies, the scientific common based solely on biological factors. Theremay be questions of whether and how much habited is critical, in accordance with the above interpretation, or how to hest legally delimente this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives; for example, to enlarge a Critical Habitat delineation so as to cover additional habitat under Section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of Critical Habitat delineations. Such questions should, and can more conveniently, be dealt with after Critical Habitat has been designated. In this respect, the Service in cooperation with other Federal agencies has drawn up a set of guidelines which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on Critical Habitat.

#### REORGANIZATION OF REGULATIONS

It is also proposed in this rulemaking to reorganize the location of the present list of Critical Habitat designations. Presently, each Critical Habitat final rulemaking is assigned a separate section number in Subpart F of Part 17. Starting with the Critical Habitat designation for the snail darter at \$ 17.61. sequential numbers have been assigned for the Critical Habitats of the American crocodile (§ 17.62), the California condor (§ 17.61), the Indiana bat (§ 17.65) and the Florida manatee (§ 17.66). This procedural method is inefficient because of the rapid consumption of available section numbers in Subpart F. It is therefore proposed that the present Subpart F. "Critical Habitat" be deleted, and a new Subpart I, "Interacency Cooperation." be added. Within the new Subpart I, it is proposed that all Critical Habitat designations for fish or wildlife be listed under § 17.95. It is anticipated that 55 17.90 through 17.94 will eventually be used to set forth the procedural regulations implementing Section 7 of the Endangered Species Act of 1973. The following sequence would be utilized in § 17.95; \$ 17.95(a) —mammals; \$ 17.95(b) —birds; \$ 17.95(c)—reptiles; \$ 17.95(d)—amphibians (Reserved); \$ 17.95(e)—fishes; \$ 17.95(f)—claims (reserved); \$ 17.95 (g)←snails (reserved): § 17.95(h) crustacea (reserved); § 17.95(i)—insecta (reserved); § 17.95(j)—other (reserved). Critical Habitat designations for plants would be located at \$ 17.96.

## PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted be as accurate as possible in delineating the Critical Habitat of the Palila. The Director, therefore, desires to obtain the comments and suggestions of the public, other concerned govern-

nity, or any other interested party a the e Proposed Rules,

Final promulgation of Critical Habe regulations will take into con energie the comments received by the Director Such comments and any additional in formation received may lead the Directo to adopt final regulations that differ from this Proposal.

## SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate i this Rulemaking by submitting writter comments, preferably in triplicate, to to Director (FWS/LE), U.S. Fish and Will. life Service, P.O. Box 19183, Washington D.C. 20036. All relevant comments received no later than April 18, 1977, wh. be considered. The Service will attenue to acknowledge receipt of comments, bu substantive responses to individual comments may not be provided. Comment received will be available for public inspection during normal business hours. the Service's Office in Suite 600, 1612 II Screet, NW., Washington, D.C.

Dated: December 12, 1976.

GEORGE W. MILIAS. Acting Director, Fish and Wildlife Service.

Accordingly, it is hereby proposed to amend 50 CFR Part 17:

1. By deleting Subpart F of Part 17; by adding a new Table of Sections for Subpart I and by adding a new Subpart I of Part 17 to read as follows:

### Subpart I-Interagency Cooperation

17.90-17.94 [Reserved]

17.95 Critical habitat-fish and wildlite. 17.96 Critical habitat-plants. [Reserved]

AUTHORITY: Sec. 7, Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884).

# Subpart I—Interagency Cooperation

§ 17.90 [Reserved]

§ 17.91 [Reserved]

§ 17.92 [Reserved]

§ 17.93 [Reserved]

§ 17.91 [Reserved]

§ 17.95 Critical Habitat-Fish and Wildlife.

(a) Mammals-(1) Florida Manatce. (i) The following areas (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species) in Florida are critical habitat for the Florida manatec (Trichechus manatus): Crystal River and its headwaters known as King's Bay, Citrus County; the Little Manatee River downstream from the U.S. Highway 301 bridge, Hillsborough County; the Manatee River downstream from the Lake Manatee Dam, Manatee County; the Myakka River downstream from Myakka River State Park, Sarasola and Charlotte Counties; the Peace River downstream from the Florida State Highway 760 bridge, De Soto and Charlotte Counties; Charlotte Harbor north of the Charlotte-Lee county line. Charlotte County; Caloosahatchee River downstream from the Florida State Highway 31 bridge, Lee County: Al. U.S. term and maters and oming the costs out recents of the decor. Come v. County and Wile the many to the fitter that the joining the constant to a temple where nected fort, est have a committee from Gordon's Fortune 11, and a Committee Comty, southward to one multivatic betalewater Boy, Monroe Count, ; . Il waters of Card, Boine, Diagnoster, Latie Blackwater, Manatee and Buttonwood sounds between Mey Larro, Monroe County, and the mainland of Dade County; Dichard hav, and all resemble and connected lakes, livers, canals, and waterways from the southern tip of Ke" Biscayne northward to and including Maule Lake, Dade County; all of Lake Worth, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Fiorida State Highway A1A southward to its southernmost point immeditately north of the town of Boynton Beach, Palm Beach County: the Loxabatchee River and its headwaters, Martin and West Polm Beach Counties; that section of the intracoastal waterway from the town of Sewalls Point, Martin County to Jupiter Inlet, Palm Beach County; the entire inland section of water known as the Indian River, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway 3. Volusia County, southward to its southernmost point near the town of Sewalls Point. Martin County, and the entire inland section of water known as the Banana River and all waterways between the Indian and Banana rivers, Brevard County: the St. Johns River, including Lake George, and including Blue Springs and Silver Glen Springs from their points of origin to their confluences with the St. Johns River; that section of the Intracoastal Waterway from its confluence with the St. Marys River on the Georgia-Florida border to the Florida State Highway A1A bridge south of Coastal City. Nassau and Duval Counties.

(ii) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of the critical habitat area.

- (2) Indiana Bat. (1) 'The following areas (exclusive of those existing manmade structures or settlements which are not necessary to the normal needs or survival of the species) are critical habitat for the Indiana bat (Myotis sodalis):
- (A) Illinois. The Blackball Mine, La Salle County.
- (B) Indiana. Big Wyandotte Cave, Crawford County; Ray's Cabe, Greene County.
- (C) Kentucky. Bat Cave. Carter County: Coach Cave. Edmonson County.
- (D) Missouri. Cave 021. Chawford County; Cave 009, Franklin County; Cave 017, Franklin County; Pilot Knob Mine, Iron County; Bat Cave, Shannon County; Cave 029, Washington County Inumbers assigned by Division of Ecological Services, U.S. Fish and Wildlife Service, Region 61.
- (E) Tennessee. White Oak Blowhole Cave, Blount County.

- (P) West Vistalia Helitoli Care, Penfastet, Cont. v.

fire former of the section 7 of the det, the mediated artistion in the constant section as a section section as a term constant of the determinant of the determinant of these critical habitatures.

(b) Birds—(1) California Condor. (i) The following areas (exclusive of those existing man-made structures or settlements violations and needs or survival of the species in California are critical habitation the California condor (Gymnogyps californianus).

(A) Sespe-Piru Condor Area; an area of land, water, and aircrose to an elevation of not less than 3,000 feet above the terram, in Ventura and Los Angeles Counties, with the following components (San Bernardino Meridian): Sespe Condor Sanctuary, as delineated by Public Land Order 695 (January 1951); TAN REOW Sec. 2, 5-10, N½ Sec. 11; TAN REOW Sec. 1-3, 10-12, N½ Sec. 13, N½ Sec. 14, N¼ Sec. 15; T5N R18W Sec. 4-9, 16, 19, 30, 31, N½ Sec. 3, N½ Sec. 17; T5N R21W Sec. 1-4, 9-16, 21-28, 33-36; T6N R18W Sec. 7-36; T6N R20W Sec. 8-36; T6N R21W Sec. 13-25; T6N R22W Sec. 3-26, 25, 36; T6N R23W Sec. 1-3, 10-14, 24, N½ Sec. 23; T7N R22W Sec. 31; T7N R23W Sec. 34-36.

- (B) Matillia Condor Area: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, in Ventura and Santa Barbara Counties, with the following components (San Bernardino Meridian): T5N, R24W W½ Sec. 3, Sec. 4-11, 14, 15, N½ Sec. 16, N¼ Sec. 17; T5N R25W E½ Sec. 1, NE¼ Sec. 12; T5½N R24W Sec. 31-34; T6N R24W S½ Sec. 32, S½ Sec. 3, S½ Sec. 34.
- (C) Sisquoc-San Rajael Condor Area: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, Santa Barbara County, with the following components (San Bernardino Meridian): Ten R26W Sec. 5, 6; Ten R27W Sec. 1, 2; T7N R26W Sec. 5-8, 17-20, 29-32; T7N R26W Sec. 1-14, 23-26, 35, 36; T7N R28W Sec. 1, 2, 11, 12; T8N R26W Sec. 19-22, 27-34; T8N R27W Sec. 19-36.
- (D) Hi Mountain-Beartrap Condor Areas: areas of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain in San Luis Obispo County, with the following components (Mt. Diablo Meridian): T30S R16E Sec. 13, 14, 23-26, SE $^{1}_4$  Sec. 11, S $^{1}_2$ -Sec. 12: T30S R17E Sec. 17-20, 29, 30; T31S R14E Sec. 1, 2, 11, 12, E $^{1}_2$ -Sec. 3, E $^{1}_3$ -Sec. 10, N $^{1}_2$ -Sec. 14, N $^{1}_2$ -Sec. 13; T31S R15E W $^{1}_2$ -Sec. 6, W $^{1}_2$ -Sec. 7, NW $^{1}_4$ -Sec. 18.
- (E) Mt. Pinos Condor Arca: An area of land, water, and airspace in Ventura and Kern Counties, with the following components (San Bernardino Meridian): 'T8N R21W $^{1}_{2}$  Sec. 5, Sec. 6 N $^{1}_{2}$  Sec. 7, NW $^{1}_{4}$  Sec. 8; T8N R22W Sec. 1, 2, E $^{1}_{2}$  Sec. 3, NE $^{1}_{4}$  Sec. 10, N $^{1}_{2}$  Sec. 11, N $^{1}_{2}$  Sec. 12; T9N R21W Sec. 31, 32, W $^{1}_{2}$  Sec. 33; T9N R22 W E $^{1}_{2}$  Sec. 35, Sec. 36.

(F) Bive Pides Condon Area: An one of Inde, which can indust by Tween County with the librarian econs near (it limbs Mendian). This Ribis Sec 5-9, 15-22, 27-39.

(C) Tejon Ranch; an area of land, water, and airspace in Kern County, with the following components (Son Bernardino Meridian); E16W T19N, R17W T19N, F47W, T11N, R18W, T9N, R18W T10N, R19W, T10N.

(H) Kern County rangelands; an area of back, water, and arrapage in Kern County between California State Highway 65 and the western boundary of Sequela National Forest, with the following components (Mt. Diablo Meridian); R29E T25S, R29E T26S, R30E T25S, R30E T26S.

(I) Tulare County rangelands; an area of land, water, and airspace in Tulare County between California State Highway 65, State Highway 198, and the western boundary of Sequoia National Forest, with the following components (Mt. Diablo Meridian): R28E T18S (all sections): R28E T20S (all sections); R28E T21S Sec. 1-18; R29E T20S (all sections); R29E T21S Sec. 1-18; R29E T20S (all sections);

(ii) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of these critical habitat areas.

(2) Palila. The following areas (exclusive of those existing man-made structures or settlements which are not necessary to the survival or recovery of the species are Critical Habitat for the Pillia (Psittirostra bailleui).

Hawaii. An area of land, water, and airspace on the Island of Hawaii, Hawaii County, with the following components: (1) the State of Hawaii Mauna Kea Forest Reserve, except (a) that portion south of the Saddle Road (State Highway 20), (b) lands owned by the United States in the Pohakuloa Training Area north of the Saddle Road (State Highway 201 established by Executive Order 1719 (Parcel 6, State of Hawaii Tax Map Key 4-4-16, Third Division), (c) that portion (Parcel 10, Kaohe IV, State of Hawaii Tax Map Key 4-4-16, Third Division) lying north of the Saddle Road (State Highway 20) and south of the Power Line Road; (2) that portion of the State of Hawaii Kaohe Game Management Area Parcel 4. State of Hawaii Tax Map Key 4-4-15, Third Division) to the north and east of the Saddle Road (State Highway 20); (3) that portion of the Upper Waikii Paddock (Parcel 2. State of Hawaii Tax Map Key 4-4-15. Third Division) northeast of the Saddle Road (State Highway 20); (4) that portion of the lands of Humuula between Puu Kahinahina and Kole lying southeast of the Mauna Kea Forest Reserve fence (portions of Parcels 2, 3, and 7, State of Hawaii Tax Map 3-8-1, Third Division) which are included in the State conservation district; (b) Pursuant to section 7 of the Act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of this Critical Habitat area.

contiles (1) American Crocodile. The following area (exclusive of those chating man-made structures or settlements which are not necessary to the termal needs or survival of the species) is critical habitat for the American croceanie (Crocodylus acutus): All land and the within the following boundary in boundary beginning at the easternmost the of Turkey Point, Dade County, on the confidence of the second straight line to Christiana Point at the southernmost tip of libert Key: thence southwestward along a time following the shores of the Atlantic Chean side of Old Rhodes Key, Palo Alto

Key, Anglefish Key, Key Largo, Plantation Key, Windley Key, Upper Matecumbe Key, Lower Matecumbe Key, and Long Key, to the westernmost tip of Long Key; thence northwestward along a straight line to the westernmost tip of Middle Cape; thence northward along the shore of the Gulf of Mexico to the north side of the mouth of Little Sable Creek; thence eastward along a straight line to the northernmost point of Nine-Mile Pond; thence northeastward along a straight line to the point of beginning.

(ii) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of this critical habitat area.

(d) [Reserved]

(e) Fishes—(1) Snail Darter, (i) The following area is critical habitat for the snail darter (Percina (Imostoma) sp.) From river mile 0.5 to river mile 17 of the Little Tennessee River, Loudon County Tennessee, as shown on a map entitled "Tellico Project," prepared by Tennesse Valley Authority, Bureau of Water Control Planning, August 1965 (map 65–MS-453 K 501). (ii) Pursuant to section 7 of the Act, all Federal agencies must take uch action as is necessary to insure the actions authorized, funded, or carried ou by them do not result in the destruction or modification of this critical habita area.

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